**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.R.No. 4527 of 2005**
**Date of decision : 11.1.2007**

Mrs. Veena Verma

.....Petitioner.

Versus

Shri.Rajinder Parshad (Since dead ) through L.R. and Ors.

.....Respondents.

**CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present : Mr.M.K. Sajjan, Advocate
for the petitioner.

Mr. A.S. Sullar, Advocate
for respondent No.1.

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**VINOD K. SHARMA,J.( ORAL )**

The present revision petition has been filed against the order dated 17.8.2005 passed by learned Addl. Civil Judge ( Sr. Divn.), Ambala vide which the application moved by the petitioner herein under Order 6 Rule 17 read with Section 151 C.P.C. has been ordered to be dismissed.

The plaintiff respondent has filed a suit for declaration to the effect that the judgment and decree dated 4.11.1993 passed by the Court of Shri Virender Singh the then Senior Sub Judge, Ambala in civil suit No. 739-CS of 1993 titled Mrs. Veena Verma Vs. Mrs. Shanti Devi regarding property bearing House tax No. 1262 Block No.3, Chowk Darzian Ambala City is illegal, null and void.

The present petitioner appeared in the said suit and filed written statement wherein various preliminary objections were taken. During the pendency of the suit, another suit which was pending in the Court of Shri

Ashok Bhardwaj the then learned Sub Judge Ist Class, Ambala City, was decided on 19.5.2000 by his successor Mrs. Sangeeta Rai Sachdev, Civil Judge ( Jr. Divn.), Ambala City. The matter in dispute in the said suit was the same as in the present suit and in view of the said order as well as dismissal of the appeal as withdrawn the petitioner has sought the amendment of the written statement so as to raise a preliminary objection that the suit of the plaintiff was barred by the principle of res judicata. The said application has been rejected by the learned trial Court by observing that this was merely an attempt to delay the proceedings of the present suit as the petitioner has not filed the application under Section 10 C.P.C. for stay of the present suit due to pendency of another suit.

The impugned order cannot be sustained as it was not open to the Court to reject the application for amendment of written statement to incorporate subsequent event which was necessary for just and proper adjudication of the case merely on the ground that the petitioner had not filed an application under Section 10 CPC for stay of the present suit which was filed subsequently. Even otherwise prima facie provisions of section 10 C.P.C.. were not applicable as the parties in that suit were not the same in both the suits. In view of this, the impugned order cannot be sustained and the same is accordingly set aside. The application moved under Order 6 Rule 17 C.P.C. for amendment of the written statement stands allowed.

11.1.2007. **( VINOD K. SHARMA )**
'sp' **JUDGE**